

No. 5584-4L-74/20907.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Omco Industries, 15/1, Mathura Road, Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 166 of 1973

between

SHRI HARBANS SINGH WORKMAN AND THE MANAGEMENT OF M/S OMCO INDUSTRIES,
15/1, MATHURA ROAD, FARIDABAD

Present :

Shri Chaman Lal Oberoi, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Harbans Singh concerned workman was in the service of M/s Omco Industries, 15/1, Mathura Road, Faridabad. The management terminated his services, vide letter dated 5th June, 1973. Feeling aggrieved by the above order he raised a demand for reinstatement. The conciliation proceedings were initiated which ended in failure.

On receipt of the failure report from the Conciliation Officer the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the dispute for adjudication to this Tribunal vide order No. ID/FD/73/28156, dated 20th September, 1973 with the following terms of reference :—

Whether the termination of services of Shri Harbans Singh is justified and in order ? If not, to what relief is he entitled ?

The parties put in their pleadings. Shri Harbans Singh concerned workman averred in the statement of claim filed on 2nd November, 1973 that he was a permanent workman since July, 1971 and was getting Rs. 270 per mensem. It was further alleged that the management terminated his services by way of victimisation on account of his trade union activities and by giving a false charge sheet which was not proved in any proper and fair enquiry.

In the other hand, the management contested his claim on the ground that he had misbehaved towards his senior Shri Bhim Singh for which he was charge-sheeted and a proper and fair enquiry was held and he was discharged from service after the enquiry. A further objection was raised in the written statement that the demand had not been first raised on the management and rejected by it before taking up the matter for conciliation and as such it did not constitute an industrial dispute within the meaning of law. The pleadings of the parties gave rise to the following two issues :—

- (1) Whether the demand the subject-matter of the present reference was first raised on the management and rejected by it before taking up the matter for conciliation ? If not, with what effect ?
- (2) Whether the termination of services of Shri Harbans Singh is justified and in order ? If not, to what relief is he entitled ?

The parties have been heard on issue No. 1 which has been treated as preliminary issue in the case.

Shri Harbans Singh, concerned workman, has made his own statement that after the discharge/termination of his services on 5th June, 1973 he had sent a demand notice direct to the management under registered cover vide postal receipt Exhibit W1 but did not receive any reply whereupon conciliation proceedings were initiated which ended in failure, the management having expressed no willingness to take him back on duty.

On behalf of the management Shri O. P. Kapoor, Partner, has appeared and stated on solemn affirmation that excepting the demand notice Exhibit M-2, dated 15th June, 1973 from the Conciliation Officer along with his notice Exhibit M-1, dated 16th June, 1973 no other demand had been received from the workman oral or in writing nor from his union.

The case has been argued on both sides and I have given a careful consideration to the material on record and the case law on the point. The position of the law on the matter in issue is clear and well settled. According to the rule of law laid down by the Hon'ble the Supreme Court in Sandhu Resettlement Corporation case a demand has first to be raised on the management and rejected by it before it can constitute an industrial

dispute as laid down under section 2(k) of the Industrial Disputes Act, 1947, amended upto date. The mere communication of the demand by the Conciliation Officer to the management is not sufficient. In the instant case it has been argued on behalf of the workman concerned that before taking up the matter for conciliation, a demand notice had been given direct to the management under registered cover. This contention which has been strongly refuted by the management as per the statement on oath of its partner Shri O. P. Kapoor M. Wl has not been sustained by leading in cogent and convincing evidence. The demand notice which forms part of the present reference is of 15th June, 1973 and a copy of the same was sent to the management by the Conciliation Officer which is Ex. M-2 along with the notice of the date of conciliation Exhibit M-1. No earlier demand notice or copy thereof alleged to have been given direct to the management has been brought on record by the workman nor has he led any oral evidence to show that he had approached the management for his reinstatement before giving the demand notice to the Conciliation Officer. The reliance has been placed upon the postal receipt Ex. W-1 which is of 23rd June, 1973. This postal receipt by itself is no proof of the fact that it relates to the registered cover containing the demand notice of the workman nor does it show as to when this registered cover was actually delivered to the management. No copy of that demand notice has been produced by the workman as already pointed out. Even if it be assumed for the sake of arguments that he sent the demand notice to the management as per the postal receipt Exhibit W-1. It is clear that the demand notice to the management and the Conciliation Officer was sent simultaneously. This is further established from the communication sent by the Conciliation Officer on the very next day that is 16th June, 1973 vide Ex. M-1. The management had thus been given no reasonable time to consider the demand of the workman as required by law.

In the absence of definite and conclusive proof to the contrary the plea of the management that the demand of the workman was first raised by means of communication Exhibit M-1 from the Conciliation Officer has to be believed. In other words it is established beyond any shadow of doubt that the demand, the subject-matter of the present reference, was not raised by the workman direct on the management and rejected by it so as to constitute an industrial dispute in accordance with the rule of law laid down by the Hon'ble the Supreme Court in the case referred to above. He straightway approached the conciliation officer who communicated his demand to the management vide letter dated 16th June, 1973 Exhibit M-1 which was not enough. He ought to have raised the demand first on the management and given it reasonable time to consider the same and the conciliation proceedings should have been started only after the demand had been rejected or there was no response from the management.

So, for the reasons stated above preliminary issue No. 1 is decided against the workman and in favour of the management.

In view of my above findings on issue No. 1, it is not necessary to go into the merits of the case for the simple and obvious reason that the demand having not been raised by the workman properly, as required by law, it did not constitute an industrial dispute which could validly be referred for adjudication to this Tribunal. The award is accordingly made holding the reference to be bad in law for want of any industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, 1947. There shall be no order as to costs.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 6th June, 1974.

No. 484, dated the 11th June, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 6th June, 1974

No. 5585-4L-74/20907 A—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV No. of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Avon Services (Production and Agencies) (P) Ltd, Pali Road, Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 81 of 1972

between

THE WORKMEN AND THE MANAGEMENT OF M/S AVON SERVICES (PRODUCTION
AND AGENCIES) (P) LTD., PALI ROAD, BALLABGARH

Present:

Shri Onkar Parshad, for the workmen.
Shri H. R. Dua, for the management.

AWARD

Sarvshri Mohmad Yamin and Mohmad Yasin had been in the service of M/s Avon Services (Production and Agencies) (P) Ltd., Pali Road, Ballabgarh allegedly for a period of 15 years or so. They were brought under retrenchment on 13th July, 1971. Feeling aggrieved they approached the management for their reinstatement but without success. This gave rise to an industrial dispute. The workmen served the demand notice whereupon conciliation proceedings were initiated which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal.—*vide* order No. ID/FB/72/40688, dated the 23rd November, 1972 with the following terms of reference:—

Whether the retrenchment of Sarvshri Mohmad Yamin and Mohmad Yasin was justified and in order? If not, to what relief they are entitled?

The parties put in their pleadings. In the statement of claim filed on behalf of the workmen, it was averred that the retrenchment in question had been brought about without notice and without payment of the retrenchment compensation and as such it was illegal. It was further stated that both the workmen had been discharging their duties in the factory in different capacity.

The management contested their claim on merits. It was urged that the Painting Section where they had been working having since been closed, these workmen became surplus and had, therefore, to be brought under retrenchment. They were offered the retrenchment compensation which, however, they refused to accept. It was further alleged that the reference was bad in law as the appropriate Government having first been convinced about the genuineness of the retrenchment of these workmen, the dispute could not validly be referred for adjudication. Still another objection was raised that the workmen concerned had not signed the statement of claim and, therefore, it was not in order.

The above pleadings of the parties gave rise to the following issues in the case:—

- (1) Whether the present reference is bad in law for the reasons given in para No. 1 of the preliminary objection in the written statement? (On management)
- (2) Whether the statement of claim filed on behalf of the workmen is not in order? (On management)?
- (3) Whether the retrenchment of Sarvshri Mohmad Yamin and Mohmad Yasin was justified and in order? If not, to what relief they are entitled?

The management has examined one witness Shri C. M. Yadav, Partner, and placed reliance upon a number of documents including the retrenchment notice Exhibit M-1, postal receipt Exhibit M. 2, A. D. receipt Exhibit M. 3, letter of postal authority that the addresses were not available at the address given Exhibit M. 4, copy of the notice of retrenchment sent to the Government Exhibit M. 5, copy of the report of the Conciliation Officer Exhibit M. 6, notice issued by the State Government rejecting demand No. 1 (pertaining to the retrenchment of the present workmen) out of the 9 demands raised against the management Exhibit M. 7, postal receipts Exhibit M. 8, Exhibit M. 9, leave applications of the present workmen Exhibit M. 10 to Exhibit M. 39.

On the other hand both the workmen have come into the witness box and controverted the allegations of the management regarding the receipt of the retrenchment notice by them or the offer of the retrenchment compensation by the management.

Arguments have been addressed on both sides and I have given a very thoughtful consideration to the evidence on record oral as well as documentary.

The issues may be taken up separately

Issue No. 1

The main contention raised on behalf of the management is that once the demand of the workmen had been rejected by the Government,—*vide* letter copy Exhibit M. 7, the dispute could not be referred for adjudication. The contention is without force. There is abundant authority on the point that the appropriate Government has the discretion to refer a particular dispute for adjudication to the Labour Court/Industrial Tribunal even if it has refused to do so earlier. On reconsideration of the matter the appropriate Government thought it proper to refer the demand of the present workmen for adjudication, the management could challenge this order by way of Writ Petition in the High Court, if so advised. In any case I do not find any thing wrong with the order of reference. Issue No. 1 is accordingly decided against the management and in favour of the workmen.

Issue No. 2

Nothing worth consideration has been urged with regard to issue No. 2. The statement of claim is signed by Shri Onkar Parshad authorised representative of the workmen and he was competent to do so. The learned representative of the management has not been able to satisfy me to the contrary. The issue is held accordingly against the management.

Issue No. 3

With regard to this issue on merits it has been argued that since the Painting Section in which these workmen were engaged had to be closed, they became surplus along with other person Ramani and their services had, therefore, to be retrenched of which notice was given to them as well as to the authorities of the Labour Department concerned. A perusal of the record produced in the case, however, does not prove that the retrenchment notice was duly served on the workmen concerned. There is no acknowledgement receipt of their having received the retrenchment notice on 13th July, 1971 when it was issued or on any subsequent date. From the perusal of the letter Exhibit M-4 received from the postal authorities on which reliance has been placed by the management it is clear that the addresses were not available. This was no service of the notice of retrenchment upon the workmen concerned.

No retrenchment compensation including one month's wages was paid or offered to either of the workmen at the time of the retrenchment on 13th July, 1971. In the retrenchment notice Exhibit M.1 itself there is no doubt a note that the workmen should collect their dues from the office but, as already observed, this notice was not served upon them.

My attention has been drawn to the letter received from the postal authorities Exhibit M-4 and it has been urged that the retrenchment compensation was remitted to the workmen by money order which they had refused to accept. This contention even is not warranted by the facts on record. The said letter of the postal authority Exhibit M-4 of is of no help to the management in the matter as from its perusal it is clear beyond any shadow of doubt that the addresses, namely, the workmen concerned were not available at the address given. By no stretch of imagination it can be considered to be refusal on the part of the workmen to accept the money orders.

It will not be out of place to mention here that, as already pointed out, the retrenchment of the workmen was brought about on 13th July, 1971 but the money orders in question are of 27th April, 1972. The remittance of the retrenchment compensation after a lapse of 9 months, if any, was no compliance of the mandatory provisions of section 25 F. The retrenchment compensation due should have been paid or offered to the workmen forthwith along with the retrenchment notice, especially when they were living in the factory premises which has not been done in the instant case for reasons better known to the management.

Moreover, both the workmen had been in service for a period of 15 years or so and could have been observed in some other department as according to their statements they had been working on different jobs during this period.

So, in view of my above discussions and for the reasons aforesaid, I am quite clear in my mind that the retrenchment of the present workmen has not brought about in strict compliance of the provisions of law as laid down under section 25 F and as such, it can not be held to be justified and in order. The issue is decided against the management and in favour of the workmen and, in the result, they are entitled to the reinstatement with continuity of their previous service and full back wages. The award is made accordingly.

The 10th June, 1974

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 485, dated the 11th June, 1974

Forwarded (four copies) to Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 10th June, 1974

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.